IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9907 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVABHAI BHANABHAI THROUGH HEIR AND L.R PREMIBEN W/O & 2 - Petitioner(s)
Versus
ADDITIONAL CHIEF SECRETARY & 2 - Respondent(s)

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Appearance :
MR KK TRIVEDI for Petitioner(s) : 1 - 3.
MR SATYAM CHAYYA, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 09/01/2007

ORAL JUDGMENT

1. The short facts of the case are that the petitioner No.1 and his brother Khushalbhai

purchased the agricultural land bearing Block No.79 of village Dharutha by Registered Sale Deed after getting permission of the competent authority for purchase of the land since the land was forming part of block. The revenue entry based on the said Registered Sale Deed was mutated in the revenue record and the land stood in the name of petitioner No.1 and his brother Khushalbhai Bhanabhai. On 15.04.1974, the name of sister of the petitioner No.1 Mithiben Bhanabhai was entered as co-owner of the land vide Entry No. 225. Thereafter, vide Entry No.390 dated 05.09.1982, the name of the other brother was deleted and consequently, Mithiben Bhanabhai, sister of petitioner No.1, continued to hold the property as per the said entry. Thereafter, vide Entry No. 556 dated 06.12.1986, the name of sons of Mithiben Bhanabhai were included in the revenue record.

2. On 25.07.1994, the District Collector, Surat, issued notice for exercise of revisional power under rule 108 (6) of the Gujarat Land Revenue Rules for Entry No.191 dated 01.11.1971, Entry No. 225 dated 15.04.1974, Entry No.390 dated 05.09.1982 and Entry No. 556 dated 06.12.1986 on the ground that the transaction is in breach of the provisions of Bombay Tenancy and Agricultural Lands Act and others.

3. It appears that after considering the reply of

the petitioners, on 05-16.03.1996, the District Collector found that the land was self acquired property of the purchasers namely Khushalbhai Bhanabhai and the present petitioner No.1 and it could not be transferred to their sister Mithiben Bhanabhai and subsequently, to the sons of Mithiben Bhanabhai and it was found that the entries are in breach of the provisions of the Stamp Act, Registration Act and Hindu Succession Act, and also in breach of the provisions of Bombay Tenancy and Agricultural Lands Act and therefore, Entry No. 225 dated 15.04.1974, Entry No. 390 dated 05.09.1982 and Entry No. 556 dated 06.12.1986 were set aside.

4. The petitioners carried the matter before the State Government in revisional jurisdiction and vide order dated 17.08.1999, the revision is dismissed and it is under these circumstances, the petitioners have approached to this Court by preferring the present petition.

5. Heard Mr. Trivedi, learned counsel appearing for the petitioners and Mr. Chayya, learned AGP for the State Authorities.

6. It is not in dispute that the entries which are set aside by the District Collector were mutated in the revenue record as back as in the year 1974 and 1982 whereas the power is exercised of revision for the first time on 25.07.1994.

Therefore, there is delay operating in exercise of the revisional power by the District Collector in cancellation of the entries.

7. If the period is counted qua the Entry No. 225 dated 15.04.1974, it was about 20 years period and if same is considered qua Entry dated 05.09.1982 and 06.12.1982, it is about 12 years. It is by now well settled that such exercise of the power after unreasonable period is not permissible and therefore, the exercise of the revisional power by the revenue authority after an unreasonable period is against the settled legal position.

8. Mr. Chayya, learned AGP, however contended that the transactions are ex-facie in breach of the provisions of Stamp Act and Registration Act and without effecting the registered document, the property is transferred by brother to sister and further, as Mithiben, sister of petitioner No.1, was not an agriculturist, the transaction would also be in contravention to the provisions of Section 84(C) of the Bombay Tenancy and Agricultural Lands Act. He therefore submitted that if the order of the Collector and its confirmation thereof by the State Government is set aside on the ground of delay by this Court, such illegality would be validated and therefore, this Court may not interfere with the orders of the lower authority.

9. It is not in dispute that on the aspects of delay, there is no justifiable ground for the delay. Further, by now, it is well settled that revenue entry neither confers any title in the property nor alters the right, if otherwise in existence, as per the provisions of Transfer of Properties Act or the relevant law. Therefore, even if the entries are allowed to remain in revenue record, such entries cannot be read as of conferring title or ownership in favour of Mithiben or her successors since the entries are not to be read as for conferring the title. Further, even for the breach of provisions of Bombay Tenancy and Agricultural Lands Act, Stamp Act, Registration Act, etc., are concerned, it would be for such competent authority under the relevant Act to initiate the proceedings, if otherwise permissible in law. The reference may be made to the decision of this Court in the case of ***Jayantilal Jethalal Soni Vs. State of Gujarat & Ors. reported at 2005(4) GLR 3354***, wherein the view taken by this Court is that such aspect is required to be reflected in the revenue record in the very entry that the transaction is prima facie in breach of provisions of Bombay Tenancy and Agricultural Lands Act and Stamp Act, as the case may be, and the reference may also be made to the concerned authority with a view to see that the public at large who may consider the revenue record is put

to the notice that the transaction may be or is subject to the proceedings under the other Act since prima facie the breach is observed by the revenue authority while recording the entry, but in any case, the entry is required to be continued in the revenue record with the said observation and clarification. Therefore, even if such entries are allowed to continue in revenue record, such entries cannot be read for circumventing the statutory provisions, which otherwise one is required to follow for effecting the proper transaction in accordance with law. Therefore, the apprehension voiced by Mr. Chayya is ill-founded, as such entries are not even otherwise conferring any title or are to be treated as for not circumventing the alleged breach of the statutory provisions either under the Tenancy Act or under the Stamp Act or the Registration Act, it cannot be said that any undue benefit would be conferred upon the petitioners.

10. Under the above circumstances, the impugned order passed by the District Collector and its confirmation thereof by the State Government deserves to be quashed and set aside on the ground of delay, but while allowing the entry to be continued in the revenue record, it deserves to be clarified that the entry shall not be treated as for conferring the title in the property if otherwise not available to the

transferee or successor thereafter. If such dispute arises on the aspect of title, it will be required for the petitioners concerned to resort to appropriate proceedings before the Civil Court for establishing the title and if the proper declaration is made, then in that case, the revenue authority would be required to record the same in the revenue register.

11. Hence, the impugned orders passed by the Collector and its confirmation thereof by the State Government qua cancellation of the entries are set aside but it is further observed that the entries shall continue to remain in the revenue record subject to the observations made by this Court in the present Judgment.

12. Petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.

(JAYANT PATEL, J.)

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